

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

GARYION DESHAWN WALKER §
v. § CIVIL ACTION NO. 6:08cv36
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Garyion Walker, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the denial of his parole. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Walker says that he received a 10-year sentence for aggravated assault, and he is supposed to serve 25 percent of it and then “have a chance to go home.” He says that he has now served 44 percent of his time but has not been given “one chance” at freedom; Walker concedes that he has “seen parole,” but says that every time he does so, they set him off and say that he is “a threat to the public.” He says that he has not been given any chances to show the Parole Board any different. On the contrary, Walker says, he has maintained a satisfactory institutional adjustment, with no major disciplinary cases, loss of good time, or demotion in classification status since his last review. He has also participated in and completed specialized programs and has full-time employment waiting for him upon his release, but the Board “does not seem to care.”

After review of the pleadings, the Magistrate Judge issued a Report on March 13, 2008, recommending that the petition be denied. The Magistrate Judge noted that according to TDCJ records, Walker is serving sentences for robbery, burglary of a habitation, possession of a firearm

by a felon, unlawful carrying of a weapon and aggravated assault. Because he has a conviction for robbery, he is ineligible for release on mandatory supervision.

The Magistrate Judge stated that Walker's petition focuses on his eligibility for parole and the failure of prison officials to release him to that status, despite the fact that he meets all of the criteria and has not had an opportunity to show the Board that he would be a good candidate for parole. However, the Magistrate Judge said, there is no liberty interest in parole in the State of Texas; consequently, prisoners cannot mount a challenge against any state parole review procedure on procedural or substantive grounds. Johnson v. Rodriguez, 110 F.3d 299, 308 (5th Cir. 1997). Hence, Walker has not shown that he was deprived of a constitutionally protected liberty interest, and so his habeas corpus petition is without merit. As the Magistrate Judge said, Walker's satisfactory institutional adjustment, including the fact that he has received no disciplinary cases since his last review, is praise-worthy, but this fact cannot create a liberty interest where none exists or entitle him to release on parole (although it may enhance his chances when he comes up for review).

Walker received a copy of the Magistrate Judge's Report on March 27, 2008, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Garyion Walker is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 28th day of May, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**